DHSC, LLC d/b/a Affinity Medical Center, Community Health Systems, Inc., Hospital of Barstow Inc. d/b/a Barstow Community Hospital, Watsonville Hospital Corporation d/b/a Watsonville Community Hospital, Community Health Systems, Inc. and/or Community Health Systems Professional Services Corporation, LLC, a single employer and/or joint employers *and* National Nurses Organizing Committee (NNOC), California Nurses Association/National Nurses Organizing Committee (CNA/NNOC) and California Nurses Association (CNA), National Nurses United

Greenbrier VMC, LLC d/b/a Greenbrier Valley Medical Center, Community Health Systems, Inc., and Community Health Systems Professional Services Corporation, LLC, a single employer and/or joint employers *and* National Nurses Organizing Committee (NNOC), AFL–CIO

Bluefield Hospital Company, LLC d/b/a Bluefield Regional Medical Center, Community Health Systems, Inc., and Community Health Systems Professional Services Corporation, LLC, a single employer and/or joint employers *and* National Nurses Organizing Committee (NNOC), AFL–CIO

Hospital of Barstow, d/b/a Barstow Community Hospital, Community Health Systems, Inc., and Community Health Systems Professional Services Corporation, LLC, a single employer and/or joint employers *and* California Nurses Association/National Nurses Organizing Committee (CNA/NNOC), AFL–CIO. Cases 08–CA–167313, 10–CA–167330, 10–CA–168085, and 31–CA–167522

August 10, 2016

ORDER[1]

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA AND MCFERRAN

The motion for summary judgment filed by Respondents Affinity Medical Center, Barstow Community Hospital, Watsonville Community Hospital, Bluefield Regional Medical Center, and Greenbrier Valley Medical Center (collectively the Hospitals) in Case 08–CA–167313, Cases 10–CA–167330 and 10–CA–168085, and Case 31–CA–167522 is denied for the reasons set forth below.

Background. At the hearing in *DHSC, LLC d/b/a Affinity Medical Center, Community Health Systems, Inc. and/or Community Health Systems Professional Services Corp., LLC*, Cases 08–CA–117890 et al. (*DHSC*), a proceeding involving many of the same parties as in these above-captioned cases, the General Counsel orally moved to consolidate the complaint in each of the three above-captioned cases (the three complaints) with the amended consolidated complaint in *DHSC*. The judge denied the motions to consolidate, and the General Counsel filed with the Board a request for special permission to appeal the judge's ruling. The Hospitals submitted a document in response to the General Counsel's request, entitled "Respondent Hospitals' Response to General Counsel's Request for Special Permission to Appeal, and Cross-Motion for Summary Judgment."

In an Order issued today in *DHSC*, we denied the General Counsel's appeal, finding that the judge did not abuse her discretion in denying the General Counsel's motions to consolidate the three complaints with the amended consolidated complaint in Cases 08–CA–117890 et al.

In their opposition brief in *DHSC*, the Hospitals argued that because the charges on which the three complaints are based were filed before the issuance of the amended consolidated complaint and the opening of that hearing, the three complaints are litigation-barred in accordance with *Jefferson Chemical Co.*, 200 NLRB 992 (1972), and *Peyton Packing Co.*, 129 NLRB 1358 (1961). The Hospitals contended, citing *Highland Yarn Mills*, 310 NLRB 644, 644 (1993), vacated 315 NLRB 1169 (1994), that

> the General Counsel may not litigate an unfair labor practice allegation predicated on events which the General Counsel knew or should have known about when issuing an earlier complaint or at the time of trial in that earlier complaint, if that allegation is of the same general nature as, or is related to, an allegation in an earlier complaint.

The Hospitals asserted that the allegations of the three new complaints are "of the same general nature" as those in the amended consolidated complaint, and that, having been omitted from that complaint, they may not be tried in this or a subsequent proceeding. In the concluding paragraph of their brief, the Hospitals requested that the Board deny the General Counsel's appeal and award summary judgment in their favor in connection with the allegations set forth in the three complaints. Thus, the Hospitals relied on their *Jefferson Chemical* argument not only in opposition to the Gen-

[1] The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

eral Counsel's appeal, but also as the basis for their cross-motion for summary judgment concerning the three complaints in Case 08–CA–167313, Cases 10–CA–167330 and 10–CA–168085, and Case 31–CA–167522.

Discussion. First, we observe that in a prior case involving Respondent CHSI, the Board adopted the administrative law judge's finding that "*Highland Yarn* has been largely overruled and *Jefferson Chemical* and *Peyton Packing* have been narrowly limited [to their factual situations]." *Community Health Services, Inc., d/b/a Mimbres Memorial Hospital*, 342 NLRB 345, 348 (2004), enfd. 483 F.3d 683 (10th Cir. 2007) (*Mimbres*). In affirming the Board's decision in that case, the Tenth Circuit noted that for reasons of fairness and administrative economy, the General Counsel may not twice litigate related charges that turn on the same set of facts. The court, like the Board, emphasized, however, the narrow scope of *Jefferson Chemical* and *Peyton Packing:*

> The Board has made clear that this restriction is policy-based, not jurisdictional, and is limited to those instances when the General Counsel attempts to litigate "the same act or conduct as a violation of different sections of the Act" or relitigates the "same charges in different cases." *Cresleigh Mgmt., Inc*., 324 NLRB 774, 774 (1997) (internal quotations omitted) (emphasis removed).

483 F.3d at 686; see also *New Surfside Nursing Home*, 330 NLRB 1146, 1151 (2000). Neither of the circumstances articulated in this precedent arises in the present case, yet the Hospitals persist in asserting the same argument.

As these cases show, *Jefferson Chemical* and *Peyton Packing* apply only to cases involving the relitigation of the same conduct. Here, as in *Mimbres*, the new allegations in the three complaints are factually independent from those under consideration in the current proceeding. See also *Service Employees Local 87 (Cresleigh Mgmt.)*, supra (judge appropriately denied motion to dismiss allegations not consolidated by General Counsel, because new allegations sufficiently unrelated to those previously litigated); *Maremont Corp.*, 249 NLRB 216, 217 (1980) (General Counsel not precluded from litigating separate allegation known at time of hearing in earlier proceeding).[2] We find, therefore, that the allegations of the three new complaints in Case 08–CA–167313, Cases 10–CA–167330 and 10–CA–168085, and Case 31–CA–167522 can be tried separately without sacrificing fairness and economy.

Second, we find that the Respondent's argument that the new allegations may not be litigated at all, either in *DHSC* or any other proceeding, is inconsistent with the purposes of the Act. The Hospitals' expansive interpretation of *Jefferson Chemical* would present the Board with two unacceptable alternatives: either to delay the adjudication of previous allegations and the potential remedies owed to employees based on them in order to permit the inclusion of new allegations that may arise, or to disregard the alleged unfair labor practices raised in subsequently filed charges and permanently deprive the affected employees of any possible remedy at all. Both of these choices would hinder the Board's performance of its statutory duties and deprive employees of the protections afforded to them by the Act. Moreover, "[t]o accept the Respondent's argument . . . [would] allow a respondent to delay indefinitely the ultimate litigation of any charges by simply engaging in further unlawful conduct. Such a result is completely at odds with the purposes and policies of the Act." *Harrison Steel Castings Co.*, 255 NLRB 1426, 1427 (1981). See also *Service Employees Local 87 (Cresleigh Mgmt.)*, supra at 775–776.

Accordingly, we deny the Hospitals' motion for summary judgment.

Dated, Washington, D.C., August 10, 2016

Mark Gaston Pearce,	Chairman
Kent Y. Hirozawa,	Member
Lauren McFerran,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] Indeed, in *Maremont Corp*., as here, the Board permitted the General Counsel to separately litigate the new complaint allegations after the judge denied the General Counsel's request to consolidate those allegations in the existing complaint. See also *Detroit Newspapers,* 330 NLRB 524, 526 (2000) ("Where as here the [r]espondents opposed the General Counsel's earlier motions to amend the underlying consolidated complaint, they cannot now claim that it is a breach of due process to have two separate hearings.").